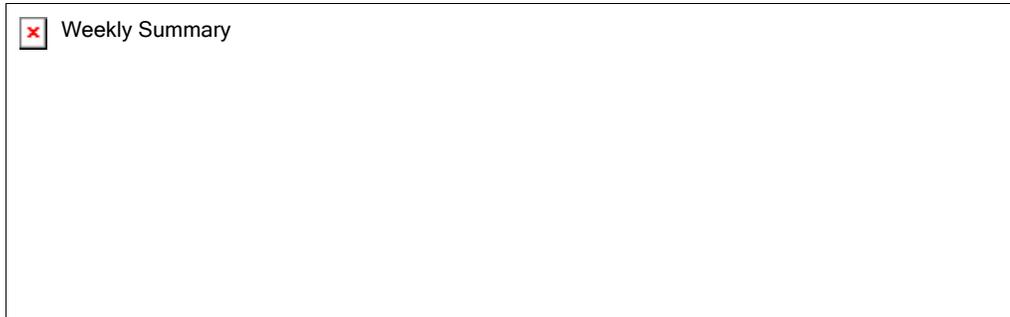


ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



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November 7, 2003

W-2920

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

Cooper Tire & Rubber Co.	Cedar Rapids, IA
Dura Art Stone, Inc.	Fontana, CA
Lamar Advertising of Janesville	Janesville, WI
Michigan Inn	Southfield, MI
Providence College	Providence, RI

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[\(R-2510\)](#) James Kobe Named Assistant Regional Director in the NLRB's Seattle, WA Regional Office



Members Liebman and Walsh agreed with the hearing officer's finding that the Employer engaged in objectionable conduct when it threatened unit employees with a loss of benefits if they selected Electrical Workers IBEW Local 1634 as their bargaining representative. Accordingly, Members Liebman and Walsh directed that the election of January 31, 2003, be set aside and a second election be conducted. Chairman Battista dissented. The tally of ballots for the election showed 6 votes for and 6 against, the Union, with no challenged ballots. [\[HTML\]](#) [\[PDF\]](#)

The hearing officer found that the Employer interfered with the election when Distribution Center Manager Todd Lemke circulated a question and answer memorandum to employees on January 27, 2003, containing the following statement regarding employee eligibility for its ROAM bonus (part of a profit-sharing program calculated from the Employer's financial results in the preceding year that is typically granted to employees in mid to late February):

QUESTION #22: If the I.B.E.W. gets in here, will we still be eligible for the ROAM bonus?

ANSWER: I don't know. Cooper has some unionized workers at other facilities and none of them participate in the ROAM bonus program. Cooper expects to announce the amount of the ROAM bonus for this year early next month. Early indications show that the ROAM bonus looks very promising this year.

Members Liebman and Walsh agreed with the hearing officer that the January 27 question and answer statement interfered with the election because it reasonably would lead employees to believe that receipt of the 2002 ROAM bonus was contingent on how they voted in the election.

Dissenting, Chairman Battista disagreed with his colleagues' finding. He said the employees reasonably understood that they definitely would receive a bonus for 2002, and that if the Union were selected, future bonuses would not necessarily be given. Chairman Battista wrote:

[E]ven if it were assumed, arguendo, that the 2002 bonus was not a 'done deal' until board of director approval, I would find that the Employer's statements were nonetheless privileged. If the Union won the election on January 31, the ROAM bonus would be subject to negotiations. . . . Thus, the Employer would be correct to say that if the Union were chosen the 2002 bonus would be uncertain.

In Chairman Battista's view, the Employer's statements were factually and legally correct and therefore, not objectionable.

(Chairman Battista and Members Liebman and Walsh participated.)

* * *

Dura Art Stone, Inc. (31-RC-8177; 340 NLRB No. 113) Fontana, CA Oct. 31, 2003. The Employer and Intervenor No. 1's (Amalgamated Industrial Workers) joint request for review of the Regional Director's Decision and Direction of Election was denied by the Board as it raised no substantial issues warranting review. In denying review, the Board found it unnecessary to rely on the Regional Director's conclusion that the issuance by the District Court of the Temporary Injunction and Order constituted an "unusual circumstance" under *Mistletoe Express*, 268 NLRB 1245 (1984). The petitioning union is Electrical Workers UE and Intervenor No. 2 is Laborers Local 783. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Schaumber, and Walsh participated.)

* * *

The Lamar Co., LLC d/b/a Lamar Advertising of Janesville (30-RC-6254; 340 NLRB No. 114) Janesville, WI Oct. 31, 2003. The Board agreed with the hearing officer's recommendation to overrule the Employer's objections 5, 6, 9, and 10 alleging that the Union (Painters Local 802) or its agents interfered with the election by promising employee Steven Jones a leather jacket if the Union won the election, engaging in electioneering, misrepresenting the election bar rule, and threatening an employee with loss of benefits. Finding no merit in objections 1, 3, and 4, the Board also adopted the hearing officer's recommendation to overrule them. Accordingly, the Board certified the Union as the exclusive collective-bargaining representative of the

employees in the appropriate bargaining unit. The tally of ballots for the election of January 5, 2001 showed 9 for and 7 against the Union, with no challenged ballots. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

* * *

Plaza Properties of Michigan, Inc. a/k/a Plaza Operations, Inc. d/b/a Michigan Inn, et al. (7-CA-43711, 44205; 340 NLRB No. 115) Southfield, MI Oct. 31, 2003. Chairman Battista and Member Schaumber denied the General Counsel's motion for default summary judgment with respect to Respondents Plaza Properties of Michigan, Inc. (PPM) a/k/a Plaza Operations, Inc. d/b/a Michigan Inn (POI), Michigan Inn, Inc. (Michigan Inn), Plaza Properties, Inc. (PPI), and J&M Hotel Management Co., L.L.C. d/b/a Clarion Ambassador Hotel a/k/a Michigan Inn (J&M) (the predecessor Respondents) and remanded the proceeding to the Regional Director for further appropriate action. Member Walsh dissented. [\[HTML\]](#) [\[PDF\]](#)

In denying the motion, the majority found that Respondents PPM, POI, Michigan Inn, PPI, and J&M failed to show good cause for failing to file a timely answer to the consolidated complaint, but that a significant number of the complaint allegations were insufficient to determine whether it was appropriate to find the alleged violations and what the appropriate remedy should be. They wrote: (1) the complaint failed to specify which Respondents committed which violations; (2) the complaint failed to specify the dates when many of the alleged violations occurred; (3) the complaint contained inconsistent allegations regarding when the predecessor Respondents ceased managing and controlling the facility; (4) the complaint allegations are insufficient to find that the predecessor Respondents unlawfully laid off all unit employees and closed or partially closed the facility; (5) the complaint and motion failed to explain the basis for finding that the predecessor Respondents' other alleged 8(a)(5) conduct also violated 8(a)(3); and (6) the complaint and motion also raised a number of remedial issues.

Contrary to his colleagues, Member Walsh would grant the General Counsel's motion against the predecessor Respondents that have failed to answer the complaint and would provide the General Counsel the relief he seeks. Member Walsh argued that: "In denying the General Counsel's uncontested motion for partial default judgment and sending this case back to the drawing board, the majority opinion unjustly delays any remedy for the innocent victims of the unfair labor practices committed by multiple wrongdoers three years ago." He concluded by saying that the predecessor Respondents have admitted all the allegations against them in a proper complaint and the General Counsel is entitled to a summary finding of unlawful conduct.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Hotel & Restaurant Employees Local 24; complaint alleged violation of Section 8(a)(1), (3) and (5). General Counsel filed motion for partial default summary judgment Feb. 10, 2003.

* * *

Providence College (1-CA-39493, 39547; 340 NLRB No. 111) Providence, RI Oct. 31, 2003. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by its denial of the day before Thanksgiving as a vacation day in retaliation for the Union's decision to take Veterans Day as a holiday in 2001; and Section 8(a)(1) and (5) by being unreasonably dilatory in turning over to the Union requested information which was relevant and necessary to carry out its collective-bargaining responsibilities and, unilaterally modifying the agreed-upon staffing arrangement for men's ice hockey games without prior notice to and affording the Union an opportunity to bargain. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Service Employees Local 134; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Pawtucket, June 10-12, 2002. Adm. Law Judge Martin J. Linsky issued his decision Nov. 14, 2002.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Korellis Roofing, Inc. (an Individual) Hammond, IN October 28, 2003. 13- CA-40945; JD(ATL)-72-03, Judge William N. Cates.

Syracuse University (Teamsters Local 317) Syracuse, NY October 29, 2003. 3- CA-23985; JD-116-03, Judge Eric M. Fine.

Electrical Workers IBEW Local 16 (ACCL Enterprises) (an Individual) Evansville, IN October 29, 2003. 25-CB-8630; JD-114-03, Judge Ira Sandron.

Ryan Iron Works, Inc. (Iron Workers Local 501) Raynham, MA October 29, 2003. 1-CA-33353, et al.; JD-113-03, Judge Martin J. Linsky.

United States Postal Service (Postal Workers Dallas Area Local) Coppell, TX October 31, 2003. 16-CA-22781; JD(ATL)-73-03, Judge Michael A. Marcionese.

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NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Bass & Bass Security (Security Workers Local 819) (29-CA-25420; 340 NLRB No. 110) St. Albans, NY October 31, 2003.

Chicago Truss Connection, LLC (Carpenters Chicago and Northeast Illinois District Council) (13-CA-41078-1; 340 NLRB No. 112) Ingleside, IL October 31, 2003.

United Union of Security Guards (Knight Protective Services) (an Individual) (5- CB-9510; 340 NLRB No. 117) Captiol Heights, MD October 31, 2003.

Corbin, Ltd. (UNITE) (9-CA-40153; 340 NLRB No. 118) Huntington, WV and Cannonsburg, KY October 31, 2003.

* * *

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Public Service Co. of Colorado (Electrical Workers [IBEW] Local 111) (27- CA-18700; 340 NLRB No. 109) Denver, CO October 29, 2003.

Streicher Mobile Fueling, Inc. (Teamsters Local 385) (12-CA-23237; 340 NLRB No. 116) Orlando, FL October 31, 2003.

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November 7, 2003